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Mailed Date
November 3, 2003

Decision 03-10-089 October 30, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AC Farms Sherwood, et al., Complainants, v. Southern California Edison Company, Defendants.	Case 02-04-003

ORDER DENYING APPLICATION OF AC FARMS SHERWOOD, ET AL. FOR REHEARING OF DECISION 02-11-003

I. SUMMARY

The Commission has carefully considered each argument (presented by AC Farms Sherwood, et al. and concludes that no ground for rehearing has been shown. The Commission finds that Decision 00-11-003 properly dismissed the complaint of AC Farms Sherwood, et al. seeking to have Edison provide them service under Schedule GS-1, and that they have failed to identify any legal error in that decision. The application of AC Farms Sherwood, et al. for rehearing of Decision 02-11-003 is therefore denied. At the same time, since no party was prejudiced thereby, the Commission fairly exercised its discretion in allowing Edison to file a reply to the comments of AC Farms Sherwood, et al. on the Proposed Decision.

II. BACKGROUND

AC Farms Sherwood, et al. are in the business of growing citrus. They receive electrical service from Southern California Edison ("Edison") under Schedule PA-1 to power machines used to circulate air in their orchards on those days during the winter when necessary to prevent damage from frost. The machines operate at 75 to 100 horsepower, or approximately 56 to 75 kilowatts ("kW").

Schedule PA-1 applies "where [Edison] determines that 70% or more of the customer's electrical usage is for general agricultural purposes or for general water or sewerage pumping and none of any remaining electrical usage is for purposes for which a domestic schedule is applicable." The charge is $17.65 per month plus $2.05 per horsepower. Alternatively, Schedule GS-1 covers "single- and three-phase service" -- with the exception of any customer "whose monthly maximum demand, in the opinion of [Edison], is expected to exceed 20 kW or has exceeded 20 kW in any three months during the preceding 12 months" -- at a charge of $.048 per day plus $0.11760 per kilowatt-hour. In addition, Schedule GS-2 contains the same language with respect to maximum demand exceeding 500 kW.

On April 4, 2002, AC Farms Sherwood, et al. filed a complaint seeking to have Edison provide them service under Schedule GS-1 for "the one or two months period each year" when their machines are operated. Complaint at 1. AC Farms Sherwood, et al. acknowledge how a customer may be disqualified from service under this schedule:

> [O]ne disqualifier looks prospectively ("expected to exceed"), and the other looks retrospectively ("has exceeded"). By its literal language, the retrospective disqualifier is limited by both time and frequency ("has exceeded 20 kw in any three months during the preceding 12 months"). By contrast, the literal language of the prospective disqualifier ("is expected to exceed") has no such limitation.

Id. at 2 (emphasis in original). Nonetheless, AC Farms Sherwood, et al., assert that this interpretation is untenable since "it is hopelessly vague and ambiguous to say that an event is 'expected' without any indication of the time period during which it is expected." Id. at 3. In the opinion of AC Farms Sherwood, et al.,

> [J]ust as the retrospective disqualifier only disqualifies an account that "has exceeded 20 kw in any three months during any three of the preceding 12 months" (in the past), the prospective disqualifier can only disqualify accounts that are "expected to exceed 20 kw" in any three months during the succeeding 12 months (in the future).

Id. at 2 (emphasis in original). AC Farms Sherwood, et al. further allege, "[I]n applying the GS-2 tariff in practice, [Edison] interprets 'expected to exceed 500 kW' to mean 'expected to exceed 500 kW in any three months during the succeeding 12 months.'" Id. at 7 (emphasis in original). Similarly, AC Farms Sherwood, et al. allege that Edison violates Section 453 of the Public Utilities Code, by "systematically" applying "the disqualifying language of Schedule GS-1 differently for PA-1 customers, as compared to existing GS-1 customers." Id. at 9. On June 10, 2002, Edison filed an answer to the complaint, asserting various defenses and recommending that it be dismissed.

On November 7, 2002, based on the pleadings, the Commission issued Decision 02-11-003, dismissing the complaint for failure to state a claim for relief under Section 1702 of the Public Utilities Code. It concluded that Edison properly provides service to AC Farms Sherwood, et al. under Schedule PA-1 and that they are not eligible to receive service under Schedule GS-1. Thus, AC Farms Sherwood, et al. have failed to allege any violation of law as required by Section 1702. The Commission went on to suggest that, if they seek to change the criteria for eligibility of service under Schedule GS-1, their proper recourse is to request modification under Section 1708.

On December 10, 2002, AC Farms Sherwood, et al. filed an application for rehearing of Decision 02-11-003. According to their application, the Commission erred (a) by concluding that they do not qualify for service under Schedule GS-1, (b) by violating Section 1705 of the Public Utilities Code in failing to explain how it reached various conclusions in Decision 02-11-003, and (c) in allowing Edison to file a reply to comments on the Proposed Decision after the time specified by Rule 77.5. On December 23, 2002, Edison filed a response to the application for rehearing, urging that it be denied.

III. DISCUSSION

A. Eligibility For Service Under Schedule GS-1 Clearly Excludes Customers Whose Demand Is Expected By Edison To Exceed 20 kW.

AC Farms Sherwood, et al. argue that "the demand eligibility language" of Schedule GS-1 is ambiguous. Application at 8. In fact, the language of Schedule GS-1 is quite clear: a customer is not eligible for service whose monthly demand is expected by Edison to exceed 20 kW. Indeed, as acknowledged by AC Farms Sherwood, et al., "[T]he literal language of the prospective disqualifier ('is expected to exceed')" imposes no limitation on Edison in determining a customer's eligibility. Complaint at 2. By contrast, their proposed interpretation infers that "the prospective disqualifier can only disqualify accounts that are 'expected to exceed 20 kW' in any three months during the succeeding 12 months (in the future)." Id. (emphasis in original). This language is not, however, reasonably suggested by the tariff. The Commission concluded, therefore, that service under Schedule GS-1 is not available to any customer whose demand is expected by Edison to exceed 20 kW. See Toward Utility Rate Normalization v. Public Utilities Commission, 22 Cal.3d 529, 537 (1978). Alternatively, as suggested in Decision 02-11-003, AC Farms Sherwood, et al. may seek modification of Schedule GS-1 through intervention in Edison's next application for a general increase in rates.

B. Edison Has Reasonably Interpreted The Language Of Schedule GS-1, Notwithstanding How It May Have Interpreted Similar Language In Schedule GS-2.

AC Farms Sherwood, et al. next argue, "In applying … identical language in Schedule GS-2 [Edison] takes the position asserted by Complainants in this case … that the 'expected to exceed' disqualifier must, like the 'has exceeded' disqualifier, be limited as to time and frequency." Application at 8 (emphasis in original). Under Section 532 of the Public Utilities Code, however, "[I]t is well settled that tariffs must be strictly construed." Utility Audit Co., Inc. v. Southern California Gas Co., 54 CPUC2d 480, 488 (1994). As a result, a utility may not violate its tariffs for one customer even if it has violated them for another. Id. With respect to eligibility for service under Schedule GS-1, therefore, Edison's interpretation of another tariff is beside the point. Rather, what matters here is whether Edison has reasonably interpreted Schedule GS-1. In this regard, the record establishes that Edison correctly denied AC Farms Sherwood, et al. service under Schedule GS-1:

> The tariff language of GS-1 clearly provides that Edison may determine whether the expected demand of customers may exceed 20 kw. Edison has made this determination consistent with the language of GS-1. Edison has acted properly and in accordance with Commission-approved tariffs.

Mimeo at 5. Accordingly, AC Farms Sherwood, et al. have failed to show that Edison's interpretation of Schedule GS-1 was unreasonable. See Toward Utility Rate Normalization v. Public Utilities Commission, supra, 22 Cal.3d at 537.

C. Edison Has Not Unlawfully Discriminated Against AC Farms Sherwood, et al. In Denying Them Service Under Schedule GS-1.

AC Farms Sherwood, et al. then argue that Edison "systematically applies the disqualifying language of Schedule GS-1 differently for PA-1 customers." Application at 12. They offer the following explanation:

> Solely by reason of the fact that the Complainants are currently served on Schedule PA-1 [Edison] has connected load data for each of the Complainants' wind machine accounts. Based on this connected load data, [Edison] concludes that these accounts have demands that are "expected to exceed" 20 kW. By contrast, current GS-1 accounts are not disqualified from Schedule GS-1 based on their connected load. The reason that [Edison] does not disqualify current GS-1 customers based on their connected load is because, unlike PA-1 customers, GS-1 customers do not provide [Edison] with their connected load data (because GS-1 is not a connected load-based rate.)

Id. at 11 (emphasis in original). In the view of AC Farms Sherwood, et al., therefore, "[Edison's] interpretation of Schedule GS-1 results in improper discrimination, in violation of Public Utilities Code § 453." Id.

Section 453 prohibits public utilities from making or granting any preference or advantage or from establishing or maintaining any unreasonable difference "as to rates, changes, service, facilities or in any other respect." Section 453 does not, however, authorize redress of all unequal treatment. Instead,

> Discrimination, prejudice and preference are questions of fact to be determined by the Commission in the exercise of its administrative function, not arbitrarily but in the light of all relevant circumstances and conditions and to be unlawful must be unjust and undue.

California Portland Cement Co. v. Southern Pacific Co., 42 CPUC 92, 117 (1939). See also California Portland Cement Co. v. Union Pacific Railroad Co., 54 CPUC 539, 542 (1955). In turn, preference may be considered undue only if it provides

an advantage to some customers and a disadvantage to others. California Portland Cement Co. v. Union Pacific Railroad Co., supra, 42 CPUC at 117. And, to establish any such effect, comparison must be made between comparable situations. Reuben H. Donnelley Corp. v. Pacific Bell, 39 CPUC2d 209, 242 (1991). See also Sunland Refining Co. v. Southern Tank Liner, Inc., 80 CPUC 806, 816 (1976); Navarro Lumber Co. v. Southern Pacific Co., 15 CPUC 317, 319 (1918). Relatedly,

> Discrimination by a public utility does not mean, merely and literally, unlike treatment accorded by the utility to those who may wish to do business with it, but refers to partiality in the treatment of those in like circumstances seeking a class of service offered to the public in general.

International Cable T.V. Corp. v. All Metal Fabricators, Inc., 66 CPUC 366, 382 (1966).

Here, AC Farms Sherwood, et al. have failed to show that Edison has discriminated against them in violation of Section 453. They have not established that their situation is comparable to that of customers found eligible for service under Schedule GS-1, in terms of either demand or usage. Nor have they established that Edison's interpretation of Schedule GS-1 has subjected them to any competitive prejudice or disadvantage. See, e.g. Sunland Refining Corp. v. Southern Tank Liners, Inc., supra, 80 CPUC at 817. Furthermore, based on the undisputed fact that their service is used to power machines which operate in a range of 56 to 75 kW, they simply do not qualify for service under the plain language of Schedule GS-1, and the characteristics of customers served under Schedule GS-1 do not change that result. See Utility Audit Co., Inc. v. Southern Gas Co., supra, 54 CPUC2d at 488.

D. Decision 02-11-003 Is Consistent With Section 1705.

AC Farms Sherwood, et al. further argue, "The Decision is essentially a series of conclusory statements, with no attempt to support those statements with

basic facts or reasoned explanation." Application at 13. To the contrary, however, Decision 02-11-003 fully considered the eligibility of AC Farms Sherwood, et al. for service under Schedule GS-1. First, it found, "Complainants' wind machines energy demand is approximately 56 kW to 74 kW per machine." Decision 02-11-003, mimeo, at 8. Also, "Schedule GS-1 provides service under that schedule if in the opinion of the utility the consumer's maximum monthly demand is expected to exceed 20 kW, or has exceeded 20 kW in any three months in the preceding 12 months." Id. In addition, "Edison has acted properly in its interpretation and implementation of GS-1." Id. at 9. That is to say, on consideration of their demand, Edison correctly denied service to AC Farms Sherwood, et al. under Schedule GS-1, regardless of its treatment of other customers. In turn, on the basis that AC Farms Sherwood, et al. failed to establish any violation of law, the Commission concluded, "The Complaint should be dismissed for failure to state to a claim under Public Utilities Code Section 1702…." Id. Taken as a whole, therefore, Decision 02-11-003 is well supported by its findings, which are in turn based squarely on the evidence of record.

E. The Commission Properly Accepted Edison's Reply To The Comments Of AC Farms Sherwood, et al. On The Proposed Decision.

AC Farms Sherwood, et al. argue finally, "The Commission incorrectly granted [Edison's] motion to accept late-filed reply comments . . . and considered the contents of [Edison's] late-filed reply contents." Application at 23. Under Rule 87, however, the Commission has reserved discretion to permit deviation from its rules, as here in the application of Rule 77.5, when good cause is shown. Thus, Decision 02-11-003 observed, the illness of Edison's attorney may be considered an extraordinary situation justifying relief. Decision 02-11-003 further noted, "Edison's attorney expedited his response and was able to file the reply comments within a few days of the due date." Mimeo at 7. Moreover, "Edison did not include any new information, or new arguments in its reply

comments in an effort to take advantage of the late filing, and therefore there is no prejudice to Complainant." Id. Accordingly, under these circumstances, the Commission's acceptance of Edison's reply was proper.

IV. CONCLUSION

AC Farms Sherwood, et al. have failed to demonstrate that the Commission committed legal error in dismissing their complaint.

THEREFORE, IT IS ORDERED that

1. The application of AC Farms Sherwood, et al. for rehearing of Decision 02-11-003 is denied.
2. This proceeding is closed.

This order is effective today.

Dated October 30, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Commissioner Wood being necessarily absent, did not participate.